

REMARKS

Applicants respectfully request entry of the amendments herein and reconsideration of the present application in view of the amendments and the reasons that follow.

I. DISPOSITION OF THE CLAIMS

Claim 16 are currently being amended. Claims 25-26 are requested to be added.

The amendments add no new matter. The amendment to claim 16 is supported by the specification, page 2, lines 21-22. New claim 25 is supported by the specification, Table 1, on pages 17-18. New claim 26 is supported by the specification, page 7, lines 5-6, and page 11, lines 20-23.

This amendment adds, changes and/or deletes claims in this application. A detailed listing of all claims that are, or were, in the application, irrespective of whether the claim(s) remain under examination in the application, is presented, with an appropriate defined status identifier.

After amending the claims as set forth above, claims 16 and 18-26 are now pending in this application.

II. STATEMENT REGARDING INTERVIEW UNDER 37 C.F.R. § 1.133(B)

Applicants' Representative thanks Examiner Ouspenski for the helpful and courteous interview of May 4, 2009. During the interview, Applicants' Representative discussed the merits of the claim amendments now presented. The substance of the interview is set forth in more detail below.

III. INDEFINITENESS

Claim 23 stands rejected as indefinite for depending from a canceled claim. Office Action, page 2, paragraph #4 et seq.

Applicants have obviated this ground of rejection by amending claim 23 to depend from claim 19 instead of canceled claim 15.

Accordingly, Applicants request withdrawal of this ground of rejection.

IV. REJECTIONS UNDER 35 U.S.C. § 112, FIRST PARAGRAPH

The claims stand rejected for nonenablement and for lack of written description (possession). Each ground of rejection is addressed in turn below.

A. Nonenablement

The claims stand rejected under 35 U.S.C. § 112, first paragraph, as nonenabled. Office Action, page 3, paragraph #6 et seq. Applicants respectfully traverse.

The claims as amended now specify that the administered composition of antibodies is “specific to the condition to be treated” (independent claim 16), set forth a one-to-one relationship between condition and antibody (new independent claim 25), and refer to the particular action of the claimed antibodies as “increasing the ADCC activity of an antibody in a patient” (new independent claim 26).

Each of these independent claims resolves the issues raised by the Office in asserting nonenablement under § 112, first paragraph. The Office asserted (emphases added):

[T]he specification, while being enabling for methods of treating a specific disease by administering a specific corresponding antibody (such as e.g. B-cell lymphoma and anti-CD20 antibody), does not reasonably provide enablement for a method of treating a disease with an unrelated antibody (such as the great majority of disease/antibody combinations recited e.g. in claims 15 and 23), or a method of treating any disease by administering a generically recited antibody

Claims 16, 25, and 26 address these objections directly. Each requires treatment of a disease by administering a corresponding antibody. Neither claim refers to treating a disease with an unrelated antibody nor to treating a disease by administering a generically recited antibody.

Accordingly, Applicants submit that the rejection has been obviated by amendment and should be withdrawn.

B. Written Description (Possession)

The claims stand rejected under 35 U.S.C. § 112, first paragraph, as lacking written description support (possession). Office Action, page 4, paragraph #7 et seq.

The Office asserted that the specification fails to provide “sufficient written description to be in possession of the genus of antibodies of unknown specificities that would nonetheless be effective in treating the recited diseases”. Office Action, page 5, lines 7-9. Applicants respectfully traverse.

As noted above regarding the nonenablement rejection, the claims as amended now specify that the administered composition of antibodies is “specific to the condition to be treated” (independent claim 16), set forth a one-to-one relationship between condition and antibody (new independent claim 25), and refer to the particular action of the claimed antibodies as “increasing the ADCC activity of an antibody in a patient” (new independent claim 26).

Each of these independent claims resolves the issue raised by the Office in asserting lack of written description under § 112, first paragraph. Each requires treatment of a disease by administering a corresponding antibody. As such, neither independent claim refers to a “genus of antibodies of unknown specificities” as objected to by the examiner in referring to the original claims.

Accordingly, the specification demonstrates possession of the full scope of the claims as amended. Applicants submit that the rejection has been obviated by amendment and should be withdrawn.

V. OBVIOUSNESS-TYPE DOUBLE PATENTING (ODP)

The claims stand rejected for non-statutory obviousness-type double patenting over co-pending application 10/575,333. Applicants request that this rejection be withdrawn. Application 10/575,333 remains pending without Notice of Allowance and the present application is the earlier-filed of the two applications. Accordingly, the present application should be allowed to pass to issue.

CONCLUSION

Applicants believe that this Amendment raises no new issues, would require no further search, and would place the application in condition for allowance. Accordingly, Applicants request entry of this Amendment and favorable reconsideration of the application as amended.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by the credit card payment instructions in EFS-Web being incorrect or absent, resulting in a rejected or incorrect credit card transaction, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. § 1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

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By



FOLEY & LARDNER LLP
Customer Number: 22428
Telephone: (202) 295-4059
Facsimile: (202) 672-5399

Rouget F. Henschel
Attorney for Applicant
Registration No. 39,221